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BEVERLY FRANK
CLERK OF SUPERIOR COURT
YUMA, ARIZONA 85304

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA

In the Matter of:

CONTRACTING FOR A
RECLASSIFICATION/MARKET STUDY
FOR SELECTED POSITIONS WITHIN
THE SUPERIOR COURT, JUVENILE
COURT, CLERK OF SUPERIOR COURT
AND ADULT PROBATION SERVICES

Administrative Order
No. 99-28

As Presiding Judge of the Yuma County Superior Court, the undersigned makes
the following findings and conclusions:

1. In accordance with the laws of the State of Arizona, the Chief Justice of the
Supreme Court of the State of Arizona has delegated to the presiding judges of the Superior
Court the authority and responsibility to exercise general supervision over all superior court
employees and to establish judicial branch personnel systems within each county. (See Arizona
Supreme Court Administrative rule V-A.) Arizona case law provides that the presiding judge of
the Superior Court in a county has the power to hire, fix the salaries of, supervise and terminate
court employees. The county board of supervisors may not disapprove the court's order
involving such personnel issues unless it is established that the presiding judge acted arbitrarily
and unreasonably. Correspondingly, the county has a ministerial duty to approve the presiding
judge's order involving such personnel issues unless the county can establish that the presiding
judge acted unreasonably, arbitrarily or capriciously.

2. No later than July 11, 1989 (effective July 1, 1989), the "Judicial Merit System"

1 was adopted and implemented in Yuma County, Arizona. Included within, and covered by, the
2 "Judicial Merit System," were the employees and personnel of the Yuma County Superior Court,
3 the Juvenile Division of the Yuma County Superior Court and both the Adult and Juvenile
4 Probation Departments of the Yuma County Superior Court. (See Administrative Order 89-7,
5 dated July 11, 1989, executed by Hon. Douglas W. Keddle, as the then Presiding Judge of the
6 Yuma County Superior Court and its Juvenile Division.)

7 3. Effective June 14, 1990, with concurrence of the Clerk of the Court, the office of
8 the Clerk of the Yuma County Superior Court, and all of its personnel, were placed within the
9 "Judicial Merit System" as previously adopted by Administrative Order 89-7. (See also
10 Administrative Order 90-23.)

11 4. On July 9, 1990, at a public meeting of the Yuma County Board of Supervisors,
12 Hon. Douglas Keddle, the then presiding judge, informed the Board that he had previously
13 advised the Administrative Office of the County that the Yuma County Superior Court and its
14 departments were not a part of the Yuma County personnel system, that it was not a part of the
15 HayGroup study, that it would not be bound by such study nor affected by it, although the
16 Superior Court would cooperate with the study and consider its findings when and if they were
17 rendered. (See Administrative Orders 90-16 and 90-18, dated July 20, 1990.)

18 5. The "Judicial Merit System" and the "Rules and Guidelines of the Judicial Merit
19 System for Classified and Unclassified Employees of the Superior court System in Yuma
20 County" have been supplemented and amended from time to time since July 11, 1989.

21 6. Employees and personnel within the "Judicial Merit System" are hired and retained
22 with the expectancy of working under the employment conditions and receiving the benefits
23 including the classifications and pay plan" provided for by the "Judicial Merit System."

24 7. The "Judicial Merit System" provides, among other things, the following:

25 **11.01 Classification Plan - Nature**

26 A. The classification plan, *as approved by the presiding judge*, shall include for
27 each class of positions an appropriate title and a class specification.

28 B. Changes in Plan: *The presiding judge of the county may establish new classes*

1 *and divide, combine, alter or abolish existing classes.*

2 **12.02 Basic Pay Plan**

3 The basic pay plan consists of grade and salary steps adopted with these rules and
4 guidelines. *The court administrator, in conjunction with the affected appointing*
5 *authorities, may make recommendations to the presiding judge of the county for*
6 *periodic changes or adjustments of the basic pay plan due to factors such as*
7 *comparable pay for similar positions within the county or state, the county*
8 *financial resources, labor market, and other relevant factors.*

9 8. On or about August 4, 1999, the Judicial Management Team, which consists of the
10 Chief Adult Probation Officer, Clerk of the Superior Court, Director of Juvenile Court and the
11 Court Administrator, recommended to the undersigned presiding judge that a position
12 classification/market study be implemented for selected positions within the services covered by
13 the judicial branch personnel system, to analyze and possibly update job content/job descriptions,
14 job classifications and compensation pursuant to the judicial pay plan and judicial merit rules.
15 The undersigned presiding judge concurred with the recommendation of the Judicial
16 Management Team and authorized the Acting Court Administrator, Martin J. Krizay, to solicit
17 proposals for such a study pursuant to the professional services policy of Yuma County.

18 9. On September 7, 1999, after soliciting proposals from a list of professional firms
19 who specialize in personnel consulting services, a committee, consisting of the Honorable Kirby
20 Kongable, Presiding Juvenile Court Judge; Martin J. Krizay, Acting Court Administrator; Tim
21 Hardy, Director of Juvenile Court; and *Cherlene Penilla, Director of Yuma County Human*
22 *Resources*, unanimously recommended that a professional services contract be awarded to Public
23 Sector Personnel Consultants to conduct a classification/market study of selected positions in the
24 services covered by the Yuma County Superior Court personnel system.

25 10. On October 4, 1999, at a public meeting of the Yuma County Board of Supervisors,
26 the Acting Court Administrator, Martin J. Krizay, requested this Board continue the agenda item
27 regarding the Court's request to contract with Public Sector Personnel Consultants until the next
28 scheduled meeting of the Board in order for the Court to respond to the issues raised by County

1 Administrator, Wally Hill, in his memo to the Board dated September 30, 1999. The issues
2 raised by County Administrator, Wally Hill, related to budget, the classification/market study
3 research design and the on-going implementation of any new pay and classification plan.

4 11. On October 18, 1999, at a public meeting of the Yuma County Board of
5 Supervisors, the Acting Court Administrator, Martin J. Krizay, advised the Board that the
6 \$27,5000 cost of the classification/market study will be absorbed through existing Court budgets
7 approved by the Board for FY 1999-2000. Following a specific acknowledgment, recognition
8 and announcement by the moving supervisor that everyone was in agreement that there was a
9 "need" for the classification and reclassifications to be done, the Board exercised its ministerial
10 duty by approving the Court's request to conduct a classification/market study of the Court's
11 personnel system. However, the Board's made it's approval subject to the following conditions
12 and restrictions:

- 13 a. The research design to be approved by the Yuma County Department of
14 Human Resources, or by the Board of Supervisors;
- 15 b. Upon completion of the study, Human resources will administer any
16 resulting new classifications and pay systems approved by the Board of
17 Supervisors and presiding judge, and;
- 18 c. The Board of Supervisors reserves the right to implement any new
19 classification and pay systems, as deemed appropriate.

20 12. Arizona case law recognizes the need for the inherent power of the Courts to
21 control personnel directly connected with the operation of the Courts in order to assure the
22 independence of the judiciary as the third branch of government. The Judicial Management
23 Team, with the approval of the undersigned, *voluntarily* involved the Yuma County Human
24 Resources Director in the selection of Public Sector Personnel Consultants from among the
25 personnel consulting services responding to the Request for Proposals noticed and soliciting
26 proposals from a list of professional firms who specialize in personnel consulting services.
27 Public Sector Personnel Consultants further specialize and have direct experience with Courts
28 and court personnel.

1 13. It was, and is, the intention of the undersigned to continue to *voluntarily* involve
2 the Yuma County Human Resources Director in the processes involved in this
3 classification/market study in order to include any expertise or experience which that person
4 might possess in this area and so that the County Administrator and the Board of Supervisors
5 could be timely informed of the direction and progress of the study. Upon the conclusion of
6 these efforts, and before implementation, the decision of the judicial management team, as
7 approved by the undersigned presiding judge, will be submitted to the Board of Supervisors for
8 approval as required by, and consistent with, the laws of the State of Arizona. At present, it
9 would be hypothetical to discuss whether the recommendations of Public Sector Personnel
10 Consultants will be approved by the Judicial Management Team, or the undersigned presiding
11 judge, or in what form it's implementation, if at all, will be submitted to the Board of
12 Supervisors.

13 14. The right of the judiciary to be independent from the influence and control of the
14 other branches of government and its source of inherent power to control its own employees is
15 founded in *Article 3 of the Arizona Constitution*, which provides that the powers of the
16 government in the State of Arizona shall be divided into three separate departments, the
17 Legislative, the Executive, and the Judicial; and, except as provided in the Arizona Constitution,
18 such departments shall be separate and distinct, and no one of such departments shall exercise the
19 powers properly belonging to either of the others. It has been established by case law that a
20 county personnel system does not apply to court personnel and that includes bailiffs, probation
21 officers, court reporters, court administrators, secretaries, and others working directly in
22 connection with the administration of justice. Also, the fact that county administration assists in
23 the hiring of employees within the court personnel system does not make such employees subject
24 to the county personnel system. Literally interpreted, the conditions and restrictions imposed by
25 the Board on October 18, 1999, when it approved the execution of a professional services
26 agreement with Public Sector Personnel Consultants, conflict with the aforementioned principles
27 of the separation of governmental powers.

28 15. The undersigned presiding judge has no objection to the Yuma County Human

1 Resources Department continuing to assist the Judicial Management Team, and this presiding
2 judge, with the administration of the Yuma County Judicial Merit System as it has historically
3 provided such assistance with the approval of the presiding judge and until further directed by the
4 presiding judge. Such past assistance has included advertising for new hires, orientation, payroll,
5 insurance, record keeping and planning assistance when requested. Such past assistance has not
6 lawfully included the administration of classifications, hiring, performance evaluations,
7 discipline, promotions or administration of the pay plan, other than maintenance of payroll
8 records, deductions, payment and the ministerial approval by the Board of classifications, salaries
9 and compensation set by the presiding judge.

10 16. The undersigned presiding judge will provide the Board with an opportunity to
11 timely review and comment on any "research design" recommended by the personnel consultant
12 and approved by the presiding judge. This will be done *voluntarily* and in an effort to proceed in
13 a spirit of cooperation with the Board and in an effort to avoid adversity. However, it is the
14 position of the undersigned that the Board has no lawful right to require the approval of such a
15 "research design" used by the court in drafting changes to the court personnel system presently in
16 place in Yuma County. Most certainly, before the implementation of any such new
17 classifications or pay system, if approved by the presiding judge, they will be submitted to the
18 Board for such approval as may be required by law.


19 17. Time is of the essence in the award and execution of a contract with Public Sector
20 Personnel Consultants because in the event reclassifications and/or a change in the pay plan are
21 found necessary and are to be recommended to the Board prior to the preparation to the 2000-
22 2001 Budget, this work must commence immediately.

23 BASED UPON THE FOREGOING, IT IS HEREBY ORDERED that the Acting Court
24 Administrator shall, consistent with the above findings and conclusions, immediately proceed to
25 negotiate and cause to be executed a personal services agreement to have Public Sector Personnel
26 Consultants conduct a position classification and market salary study of selected and designated
27 positions within the services provided by the Yuma County Superior Court, the Yuma County
28 Superior Court, Juvenile Division, the Clerk of the Superior Court and the Yuma County Adult

1 Probation Department.

2 IT IS FURTHER RESPECTFULLY REQUESTED that the Yuma County Board of
3 Supervisors forthwith direct the Yuma County Administrator, the Yuma County Finance Director
4 and the Yuma County Director of Human Resources to take such steps and do such things as are
5 reasonably necessary to carry out and give effect to this Order.

6 DATED this 4th day of November, 1999.

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9 Tom C. Cole, Presiding Judge

10 Copies to:

11 Hon. Philip L. Hall
12 Hon. Thomas A. Thode
13 Hon. Kirby Kongable
14 Hon. John N. Nelson
15 Beverly Frame, Clerk of the Superior Court
16 Tim Hardy, Director of Juvenile Court
17 Martin J. Krizay, Chief Adult Probation Officer
18 Wally Hill, County Administrator
19 Yuma County Board of Supervisors
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